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7 LAUREN M.,
8 Plaintiff,
9 v.
10 KILOLO KIJAKAZI,
11 Defendant.

Case No. 22-cv-02692-JSC

12
13 **ORDER REMANDING FOR FURTHER
14 PROCEEDINGS**

15 Re: Dkt. Nos. 21, 22, 23

16 Plaintiff filed this lawsuit seeking judicial review of the final decision by the Commissioner of
17 Social Security denying her claim for Social Security benefits for a combination of mental
18 impairments, including post-traumatic stress disorder (PTSD), adjustment disorder with depressed
19 mood, and major depressive disorder. On February 14, 2023, the Court granted Plaintiff's motion for
20 summary judgment, denied the Commissioner's cross-motion, and ordered the parties to submit
21 supplemental briefing on the question of the scope of remand. (Dkt. No. 21.) Having reviewed the
22 parties' supplemental submissions, the Court concludes remand for further proceedings consistent with
23 the Court's February 14, 2023 Order is the appropriate remedy.

24 Generally, when the Court reverses an ALJ's decision, "the proper course, except in rare
25 circumstances, is to remand to the agency for additional investigation or explanation." *Benecke v.*
26 *Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004). However, a court may remand for an immediate
27 award of benefits where "(1) the record has been fully developed and further administrative
28 proceedings would serve no useful purpose; (2) the ALJ has failed to provide legally sufficient
reasons for rejecting evidence, whether claimant testimony or medical opinion; and (3) if the
improperly discredited evidence were credited as true, the ALJ would be required to find the
claimant disabled on remand." *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014) (discussing

1 the “credit-as-true” rule).

2 In her motion for summary judgment, Plaintiff asked the Court to remand “because further
3 proceedings are necessary to accurately determine [Plaintiff’s] entitlement to benefits pursuant to
4 Title II.” (Dkt. No. 10 at 17.) In her reply, Plaintiff requested remand for an award of benefits
5 and/or further proceedings. (Dkt. No. 17 at 9.) In granting summary judgment in Plaintiff’s favor,
6 the Court concluded remand for an award of benefits seemed particularly appropriate here given
7 the ALJ had ignored the Court’s prior remand order. (Dkt. No. 21 at 13.) However, because it
8 was unclear whether the Court could remand for an award of benefits, where, as here, the ALJ’s
9 analysis only proceeded through step two, the Court asked the parties to submit supplemental
10 briefing. (*Id.*)

11 Generally, a finding of a severe impairment at step two just requires the ALJ to proceed to
12 the next step in the sequential analysis, but not that the ALJ find the claimant disabled. *See*
13 *Hoopai v. Astrue*, 499 F.3d 1071, 1076 (9th Cir. 2007) (holding the step two severity
14 determination is “merely a threshold determination of whether the claimant is able to perform his
15 past work. Thus, a finding that a claimant is severe at step two only raises a *prima facie* case of a
16 disability.”). Plaintiff’s briefing does not address the procedural question of how the credit-as-true
17 operates if, when applied, it would result in a finding of a severe impairment at step 2. (Dkt. No.
18 22 at 3.) Instead, Plaintiff argues the ALJ would be required to find her disabled because a
19 finding of a severe impairment at step two means she would have a listed impairment, but Plaintiff
20 does not identify the listing or otherwise explain this reasoning. *See Tackett v. Apfel*, 180 F.3d
21 1094, 1099 (9th Cir. 1999) (holding plaintiff bears the burden of establishing she meets a listing).

22 As the Commissioner notes, even if the ALJ had concluded Plaintiff had a severe
23 impairment, under the regulations, he would then have been required to assess the degree of
24 functional limitation resulting from the claimant’s mental impairment before he could find that the
25 severity of the claimant’s mental impairment met or equaled the severity of a listed mental
26 impairment such that she was disabled. *See* 20 C.F.R. §§ 416.920(a)(4)(iii), 416.920a(b)(2),
27 416.920a(c)(3). Given these further procedural requirements, the Court cannot say that even if the
28 ALJ had credited the improperly discredited evidence as true and found Plaintiff had a severe

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Northern District of California

1 impairment at step two, the ALJ would then have been required to find her disabled at step three
2 or elsewhere in the sequential process. The record must be further developed. *See Treichler v.*
3 *Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1105 (9th Cir.2014) ("Where, as in this case, an ALJ
4 makes a legal error, but the record is uncertain and ambiguous, the proper approach is to remand
5 the case to the agency.").

6 The Court is, however, concerned by the ALJ's pattern of ignoring the Court's orders on
7 remand. The issues which compelled the Court to grant Plaintiff's first motion for summary
8 judgment—the ALJ's treatment of Dr. Dixit's opinion and the VA's finding of 100 percent total
9 and permanent disability—are the **same** issues the Court previously remanded on. *Compare*
10 *Lauren E. M. v. Saul*, No. 19-CV-01983-JSC, 2020 WL 6562323 (N.D. Cal. Nov. 9, 2020) *with*
11 Dkt. No. 21 (Feb. 14, 2023 Order). While the ALJ advanced (some) different reasons, the ALJ's
12 reasons were again not supported by substantial evidence. "Obduracy[, however,] is not a ground
13 on which to award benefits; the evidence properly in the record must demonstrate disability."
14 *Briscoe ex rel. Taylor v. Barnhart*, 425 F.3d 345, 357 (7th Cir. 2005). The Court thus remands
15 with instructions to conduct further proceedings consistent with its February 14, 2023 Order.

16 This Order disposes of Docket Nos. 22 and 23.

17 The Court will enter separate judgment.

19 **IT IS SO ORDERED.**

20 Dated: March 31, 2023

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JACQUELINE SCOTT CORLEY
United States District Judge